IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.288 OF 2007

Jamiruddin Ansari S/o Gulam
Rasul Ansari ...Applicant.

Versus

1.Central Bureau of Investigation, &
2.State of Maharashtra. ...Respondents.

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Mr.A.P.Mundargi, Sr.Advocate, for the Applicant.
Mr.Raja Thakare, Special P.P. for CBI.
Mr.Rajesh More, APP, for the State.

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CORAM : SMT.V.K.TAHILRAMANI,J.

DATED : 16th April, 2007.

P.C.:

1. Heard the learned Senior Advocate for the Applicant, the learned Counsel for the CBI and the learned APP for the State.

2. The applicant is seeking bail in C.R.No.122 of 2004 of DCB, CID i.e. CBI Case No.RC.4(S)/2005/SCR.III/ND. The said case is under Sections 120-B, 384, 387 r/w. 34 of IPC r/w. 3(1)(ii), 3(2) and 3(4) of the MCOC Act, 1999.

3. It is the prosecution case that some Gutka making machines were exported to Karachi to the Gutka company run by Anis Ibrahim Kaskar brother of dreaded gangster Dawood Ibrahim. It is the case of the complainant that the present applicant approached him on behalf of Dawood Ibrahim and asked him to send Gutka making machines to Karachi. It is further the case of the complainant that the applicant at the point of firearm threatened the complainant and also took the demand draft from him of Rs.2,64,000/-.

4. Mr.Mundargi submitted that the coaccused Rajesh Pancharia has been granted bail. However, it is seen that the case of the present applicant is not the same as that of Rajesh Pancharia. The complainant has not involved Rajesh Pancharia in the same manner as the applicant has been involved by the complainant. Hence, there is no question of parity.

5. Thereafter Mr.Mundargi submitted that two coaccused i.e. Mr.Joshi and Mr.Dhariwal have challenged some orders passed by the trial Court before the High Court and the Supreme Court. In

the said matter, the Supreme Court has stayed the proceedings before the trial Court. Mr.Mundargi submitted that the applicant has been arrested on 10.10.2004 and since then he is in custody. The applicant is the only accused who is in custody in the said case. He has stated that though about two and a half years have lapsed there is no possibility of trial proceeding in the near future, on account of the stay being granted by the Supreme Court. As far as this aspect is concerned, Mr.Thakare has submitted that the CBI has filed an application in the Supreme Court on 15.1.2007 for vacating the stay granted by the Supreme Court vide order dated 19.9.2006 in SLP No.1694 of 2006. Mr.Thakare submitted that however the matter is yet to be listed for hearing.

6. Mr.Mundargi submitted that the minimum punishment for the offences involved in the present case is five years and the applicant has already undergone almost half the period of minimum imprisonment. In support of this contention, he has placed reliance on some orders passed by the Supreme Court and the High Court,

wherein on completion of half the period of imprisonment in cases under the NDPS Act, POTA and MCOC Act, the accused have been granted bail as they had completed half the period of imprisonment. However, it is seen that though the relevant sections provide for a minimum term of imprisonment of five years, but, the maximum sentence is life imprisonment. No doubt the applicant is in custody for about two and a half year, but, that cannot be said to be on account of any fault or laxity on the part of the prosecuting agency. Hence, the prosecution cannot be blamed for the delay in the trial.

7. There is sufficient material which implicates the present applicant in this case. Hence keeping in view the provisions of section 21(4) of the MCOC Act, I do not think that this is a fit case to grant bail to the applicant.

8. Application is rejected.

. Certified copy expedited.

(SMT.V.K.TAHILRAMANI,J.)